

October 17, 2007

The Honorable Sue L. Robinson
U.S. District Court
District of Delaware
844 North King Street
Wilmington, Delaware 19801

Re: Duffy v Department of State
C.A. No. 66-460-SLR

Dear Judge Robinson,

This letter is written to the Court after consultation with opposing counsel, Mr. Niedzielski. I am sending him a copy of this letter so he can correct any misstatement that I may make. The purpose of this letter is to seek a modification of the Scheduling Order in the above case, which is scheduled for trial in April 2008. That request arises from my failure to give proper notice to Mr. Niedzielski of my intent to use Dr. Cindrich and Dr. Guariello (psychiatrists) as expert witnesses. Their names are contained in discovery, and I believe my intent to use them was understood, but clearly I did not give Mr. Niedzielski the notice I should have. I take responsibility for that oversight and here express my regret to the Court and Mr. Niedzielski.

However, in good conscience I cannot agree to simply forego this testimony and harm my client's cause. I therefore requested that Mr. Niedzielski agree to modify the Scheduling Order to extend the time to give notice of the experts. Mr. Niedzielski can then depose or otherwise act as he sees fit. Mr. Niedzielski advised he will not agree and that if the Court were to permit such an extension he would want to move the trial date. While it is not clear to me that should be necessary that is preferable to excluding the expert testimony sought. Discovery in this case will shortly be concluded. Had I been aware of my oversight I would have dealt with this issue sooner.

I am requesting the Court hold, at its convenience, a teleconference with the parties to address the issue above raised. In that respect I plan to be out of the State between October 23, 2007 and October 30, 2007, tickets having already been purchased. I would request the telephone conference, if granted, not be held during that time period.

Thanking the Court for its consideration of this request, I am

Very truly yours,
BROWN, SHIELS & O'BRIEN

/s/ROY S. SHIELS

RSS\bs

cc: Marc P. Niedzielski, Esquire